

1 **REMOVAL OF COUNTY OR PROSECUTION**

2 **DISTRICT OFFICER AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Scott L Wyatt**

6 Senate Sponsor: Darin G. Peterson

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to county or prosecution district officers.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that a county or prosecution district officer charged with a felony arising
14 from official conduct is entitled to return to office if the charges are dismissed or the
15 officer is acquitted but shall be removed from office if the officer is convicted or
16 enters a plea of nolo contendere and that a conviction or plea of nolo contendere is
17 considered to be a determination that the officer has committed malfeasance in
18 office;

19 ▶ provides that the removal process resulting from a conviction or nolo contendere
20 plea does not replace another statutory removal process; and

21 ▶ eliminates a provision calling for county legislative body supervision of a person
22 employed to discharge temporarily the duties of an officer on administrative leave.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **17-16-10.5**, as enacted by Chapter 206, Laws of Utah 1999



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **17-16-10.5** is amended to read:

33 **17-16-10.5. Malfesance in office -- Felony charges or incapacitation -- Paid**
34 **administrative leave -- Reassignment of duties.**

35 (1) The failure of an elected county or prosecution district officer substantially to
36 perform the officer's official duties constitutes malfesance in office under Section 77-6-1.

37 (2) (a) If an elected county or prosecution district officer is charged with the
38 commission of a felony arising from conduct related to the officer's official duties, the officer
39 shall be placed on paid administrative leave by the county legislative body until [~~a court of~~
40 ~~competent jurisdiction disposes of the charges~~];

41 (i) the charges are dismissed or the officer is acquitted, at which time the officer shall
42 be entitled to return to office, unless the officer's term of office has in the meantime expired; or

43 (ii) the officer is convicted or enters a plea of nolo contendere, at which time the court
44 presiding over the felony prosecution arising from conduct related to the officer's official duties
45 shall enter an order removing the officer from office.

46 (b) A conviction or a plea of nolo contendere, relating to a felony charge described in
47 Subsection (2)(a), shall be considered to be a determination that the officer has committed
48 malfesance in office.

49 (c) The provisions under this Subsection (2) for the removal of a county or prosecution
50 district officer are in addition to and do not replace or supersede the removal provisions under
51 Title 77, Chapter 6, Removal by Judicial Proceedings.

52 (3) (a) During the time that an elected county or prosecution district officer is on paid
53 administrative leave under Subsection (2), the officer's duties may, except as provided in
54 Subsection (3)(c), be temporarily:

55 (i) reassigned to another officer by the county legislative body; or

56 (ii) performed by a person employed for that purpose[~~, under the supervision of the~~
57 ~~county legislative body~~].

58 (b) For purposes of Subsection (3)(a) with respect to a prosecution district officer in a

59 multi-county prosecution district, "county legislative body" means the legislative bodies of all
60 counties included in the prosecution district.

61 (c) A reassignment under Subsection (3)(a) may not result in the same person
62 exercising the duties of:

63 (i) both a county legislative body member or county treasurer and county auditor; or

64 (ii) both a county executive and county auditor.

Legislative Review Note

as of 6-14-05 10:35 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0274

Removal of County or Prosecution District Officer Amendments

20-Jan-06

9:39 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst